IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 23180 of 2004

Between:

Mrs.K. Sujatha, D/o Late K. Krishna Murthy,
R/o Flat No. 406, Grace Apartments, Opp: Humayunnagar Post Office,
Mehdipatnam, Hyderabad.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, Health,Medical and Family

Welfare, Rep. by its Principal Secretary, Secretariat, Government

of Andhra Pradesh, Hyderabad.
2 The Director of Medical Education, Government of Andhra

Pradesh, Koti, Hyderabad.
3 The Authorisation Committee, Rep. by The Director of Medical

Education, Government of Andhra Pradesh, Koti, Hyderabad.
4 The Global Hospital, rep. by its Managing Director,
Road No.1, Banjara Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus , (a) declaring the action of the respondents No.1 ,2 and 3 in not granting permission

for transplantation of organs of my son Sri K. Venkatesh who is on the ventilator and who is in a such a serious condition of non-heart beating stage as illegal, unconstitutional unreasonable and contrary to the provisions of the A.P. Transplantation of Human Organs Act 1995 and the rules framed there under and consequently direct the respondents to grant necessary permission; (b) to direct the Government to include the non-heart beating category also in A.P. Transplantation of Human organs Act, 1995 in the public interest and save life's of several patients who have dire need of the organs to the betterment of their lives.

Counsel for the Petitioner:MR.T.RAJENDRA PRASAD

Counsel for the Respondent Nos.1 to 3: GP FOR MEDICAL HEALTH & FAMILY WELFARE

Counsel for the Respondent No.4: None appeared.

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

Pursuant to the last order, counter affidavit has been filed of Dr.G.Sai Gopal, Director of Medical Education. To the counter-affidavit is appended a copy of minutes of the meeting of the Authorisation Committee held on 9th December, 2004. The Authorisation Committee has opined that organs can be harvested after the death (brain death) of the patient and made use of for needy recipients duly following the medical procedure and guidelines as laid down in the Andhra Pradesh Transplantation of Human Organs Act, 1994 (for short "the Act"). The petitioner in her representation to the Principal Secretary, Ministry of Health and Family Welfare has requested to permit the organizations to make it possible to retrieve suitable organs from her son after his death resulting from discontinuation of treatment.

Learned counsel for the petitioner submits that condition of the petitioner's son will not lead to brain-stem death and according to him even non-heart beat condition is declared equivalent to death and, therefore, prays that direction be issued to the respondents to substitute the word 'brain death' with that of death (non-heart beating condition).

In the counter affidavit filed on behalf of respondents 1 to 3, it is stated that such a direction cannot be issued since it will be totally unethical. In the non-heart beating condition, it is mandatory that the decision to terminate the ventilator and life supporting system should be transparently independent of the decision to retrieve the organs for transplantation. The life supporting systems should not be terminated for purpose of organ transplantation. The only prayer made in the writ petition is to direct the authorities to include non-heart beating category also in the Act. This prayer cannot be granted since there is no challenge to the provisions of the Act.

There is also no challenge made to the definition of “brain-stem death” or to the report of the Committee. With leave and liberty to file fresh petition, this petition is closed.

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DEVINDER GUPTA, CJ

15-12-2004

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M.NARAYANA REDDY, J

Tvr

To

1. The Principal Secretary, Government of Andhra Pradesh,

Health, Medical and Family Welfare, Secretariat, Government

of Andhra Pradesh, Hyderabad.

2 The Director of Medical Education, Government of Andhra

Pradesh, Koti, Hyderabad.

3 The Director of Medical Education, Authorisation

Committee, Government of Andhra Pradesh, Koti, Hyderabad.
4 2 CCs to the Govt. Pleader for Medical, Health and Family Welfare,

High Court Buildings, Hyderabad (OUT).

5 2 CD copies.